

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21904 OF 2006

DATED: 9th NOVEMBER, 2006.

Between :

Smt. N.S. Padmavathi .. Petitioner

And

1. Syndicate Bank, rep. By its Manager,
Ananthapur Main Branch, Station Road,
Ananthapur., and 5 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21904 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the action of the respondents 1 and 2 in bringing the petitioner's property to sale pursuant to the order made by the Debts Recovery Tribunal as arbitrary and illegal.

I have heard the learned Counsel for the petitioner as well as the learned Counsel appearing for the respondents 1 and 2; and perused the material on record.

From the material on record placed before this Court by the petitioner, it is clear that the 1st respondent Bank filed O.A.No.6 of 2004 on the file of the Debts Recovery Tribunal, Hyderabad claiming recovery of Rs.37,76,876-25 ps allegedly due in connection with the loan availed by the 4th respondent herein. It was the case of the 1st respondent that the petitioner herein along with the 6th respondent stood as guarantors and executed memorandum of deposit of title deeds. Accordingly, in O.A.No.6 of 2004, the petitioner was also jointly and severally made liable for recovery of a sum of Rs.37,76,876-25 ps and the same was allowed by the Tribunal. Pursuant thereto, recovery certificate dated 7-3-2005 was issued making the petitioner jointly and severally liable to pay the said amount. In this writ petition, the petitioner pleaded that she had not executed any document creating equitable mortgage in favour of the 1st respondent Bank and that her signatures were forged by the 4th respondent. It is also pleaded that she was not aware of the recovery proceedings initiated

by the 1st respondent Bank till 17-10-2005. Immediately thereafter she moved an application before the Tribunal seeking to condone the delay of 527 days in filing the petition to set aside the ex parte order dated 1-3-2005 alleging that the 4th respondent had played fraud and deposited title deeds belonging to her. Though the said petition was filed on 11-8-2006 the same has not yet been decided, but in the meanwhile the 2nd respondent issued auction notice in the local dailies proposing to bring the properties for sale. Initially, the sale was scheduled on 20-10-2006, but the same was postponed and now stands posted to 10-11-2006. Hence, this writ petition contending inter alia that while the application to set aside ex parte order is still pending before the Tribunal the 2nd respondent is not justified in bringing the property to sale.

Though the learned Counsel for the petitioner across the bar submitted that there is no regular Presiding Officer in the Tribunal at Hyderabad and consequently the petitioner's application could not be decided, the learned Counsel appearing for the respondents 1 and 2 submitted that the Presiding Officer of the Tribunal at Visakhapatnam is placed as in-charge and the matters are being heard regularly and the delay in deciding the application was only on account of deliberate inaction on the part of the petitioner.

In the affidavit filed in support of the writ petition, it is stated that the petitioner was served with a legal notice on 3-11-2003 in which it was clearly stated that she stood as a guarantor for the loan availed by the 4th respondent. It is also clear from the version of the petitioner that the civil suit has been filed by her subsequently in the Court of Additional District Judge, Ananthapur making certain allegations of fraud against the 4th respondent who is no other than her Brother-in-law. Though the petitioner sought for temporary injunction, the same was not granted by the Civil Court.

Having regard to the undisputed facts, it appears that the

petitioner was very well aware of her liability in the year 2003 itself. Since O.A.No.6 of 2004 filed by the 1st respondent Bank was allowed and the recovery certificate was issued long back on 7-3-2005, I do not find any justifiable reason to hold that the action of the respondents 1 and 2 in bringing the property in question to sale is either arbitrary or illegal.

Accordingly, the Writ Petition is dismissed. No costs.

However, this shall not preclude the petitioner to participate in the sale pursuant to the impugned auction notice.

G.ROHINI, J.

Dt. 9-11-2006

gbs